

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: January 25, 2005

Concurrent Use No. 94002033

STEPHEN M. LINK

v.

DR. ROOF, INC.

**Frances S. Wolfson, Interlocutory Attorney:**

In this concurrent use proceeding, applicant, Stephen M. Link ("Link") seeks to register the mark RX DR. ROOF AND DESIGN for "home maintenance, home repair and custom home construction services," for the area comprising the states of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, New York, Connecticut, Pennsylvania east of Interstate Highway 81, New Jersey, and Delaware.<sup>1</sup>

Link cites as an exception to his right to use, use by Dr. Roof, Inc. of the mark DR. ROOF for "commercial and residential roof repair services," for the area comprising the states of Pennsylvania west of Interstate Highway 81, West Virginia, Ohio, Maryland, Virginia, North Carolina, South Carolina, Michigan, Indiana, Kentucky, Tennessee, Alabama, Georgia, Florida, Wisconsin, Illinois, Mississippi,

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<sup>1</sup> Application Ser. No. 74637996.

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Louisiana, Arkansas, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, Washington, Oregon, California, Alaska, Hawaii, Guam, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia.

On December 12, 2004, the Board ordered Link to show cause why judgment should not be entered against him for failure to prosecute this case. The Board's order was drafted before Link's motion (filed November 17, 2004) for concurrent use registration was associated with the proceeding file. Because Link's motion was filed before the Board's order was mailed, the Board's order is hereby vacated.

Link's motion is based upon an agreement signed with Ballast Revocable Living Trust (assignee of Dr. Roof, Inc.).<sup>2</sup> By the agreement, each party recognizes the rights of the other party to use its mark for its goods in a geographically-restricted area, and they agree not to use or advertise their respective marks in the territory of the other party.

The burden of proof in a concurrent use proceeding is upon applicant to establish facts which would show, prima facie, that there is no likelihood of confusion arising from

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<sup>2</sup> Assignment recorded at Reel/Frame Nos. 1420/0484.

the concurrent use of similar marks in the parties' respective geographical areas. See *In re Beatrice Foods Co.*, 429 F.2d 466, 166 USPQ 431 (CCPA 1970); and *Handy Spot Inc. v. J.D. Williams Co., Inc.*, 181 USPQ 351 (TTAB 1974). The primary concern of the Board in determining whether and to what extent a registration is to be granted is the avoidance of any likelihood of confusion. Moreover, while stipulated agreements between parties are not binding on the Board, there can be no better assurance of the absence of a likelihood of confusion, mistake or deception than the parties' promises to avoid any activity which might lead to such confusion.

Accordingly, we believe the parties by their agreement have prima facie established that the concurrent use of the involved marks is not likely to lead to confusion, mistake, or deception, and the concurrent use registration is hereby approved.

**DECISION:**

Applicant, Stephen M. Link, is entitled to register the mark RX DR. ROOF AND DESIGN for "home maintenance, home repair and custom home construction services," for the area comprising the states of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, New York, Connecticut, Pennsylvania east of Interstate Highway 81, New Jersey, and Delaware.

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Registration No. 1578137, owned by Ballast Revocable Living Trust, will be restricted to the area comprising the states of Pennsylvania west of Interstate Highway 81, West Virginia, Ohio, Maryland, Virginia, North Carolina, South Carolina, Michigan, Indiana, Kentucky, Tennessee, Alabama, Georgia, Florida, Wisconsin, Illinois, Mississippi, Louisiana, Arkansas, Missouri, Iowa, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, New Mexico, Colorado, Wyoming, Montana, Idaho, Utah, Arizona, Nevada, Washington, Oregon, California, Alaska, Hawaii, Guam, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia.

***By the Trademark Trial  
and Appeal Board***